

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**MOONBEAM CAPITAL  
INVESTMENTS, LLC**, a Nevada  
limited liability company and **THE  
TRAVELERS INDEMNITY  
COMPANY**, a Connecticut  
corporation, as subrogee of Moonbeam  
Capital Investments, LLC

Case No. 18-cv-12606  
Hon. Gershwin A. Drain  
Magistrate Judge Anthony P. Patti

Plaintiffs,

v

**INTEGRATED CONSTRUCTION  
SOLUTIONS, INC.**, a Michigan  
corporation,

Defendant.

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**PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO THE MOTION  
IN LIMINE RE TESTIMONY ABOUT THE CREDIBILITY AND  
VERACITY OF WITNESSES (ECF NO. 81)**

**A. ICS's Response Does Not Challenge That Issues Of Credibility Are Left To The Jury**

ICS's motion response provides no counter-argument to Plaintiffs' position that credibility determinations are solely for the jury. *Regal Cinemas, Inc. v. W & M Props.*, 234 F.3d 1269 (6th Cir. 2000) (table disposition); *Snyder v. Kohl's Dept. Stores, Inc.*, 580 Fed. Appx. 458, 461 (6th Cir. 2014). ICS does not present any law or argument challenging the jury's right to determine and assess witness credibility. *United States v. Schultz*, 855 F.2d 1217, 1221 (6th Cir. 1988). *See United States v. Dickens*, 438 F. Appx 364, 372 (6th Cir. 2011) (it is improper to ask a witness to comment on the credibility of another witness because credibility determinations are the province of juries). Since ICS does not challenge this law, its personnel and experts should be precluded from offering any opinions on the credibility or veracity of Plaintiffs' witnesses.

**B. Similarly, ICS's Response Does Not Counter That Its Lay Witnesses Have No Basis For Opining On The Credibility Or Veracity Of Plaintiffs' Witnesses**

ICS's motion response does not establish that its lay witnesses have any personal knowledge of the credibility or veracity of Plaintiffs' personnel. *See Wright & Miller, Federal Practice and Procedure* (2d ed.), *A Witness's Character for Truthfulness or Untruthfulness* § 6114. Opinions on credibility and veracity must be based on perceived facts of truthfulness or untruthfulness. *Id.* ICS has failed to present facts corroborating that its witnesses have any relationship with any ICS's

personnel. Given this lack of evidence, ICS's witnesses must be barred from presenting any opinions on credibility or truthfulness. See *U.S. v. Tager*, 788 F.2d 349 (6th Cir. 1986).

**C. The Admissibility Of Statements Allegedly Made By Gary Sabbagh Are Not The Subject Of This Motion In Limine; In Any Event ICS Has Not Met Its Burden To Show That Gary Sabbagh Make An Adverse Statement And That He Was Authorized To Make Such A Statement**

Instead of bringing their own Motion in Limine regarding the admissibility of the alleged statements of hotel manager Gary Sabbagh, ICS raises it in response to Plaintiffs' own motion regarding veracity and credibility. ICS's arguments are deficient in four ways. First, Sabbagh never made the statement. Second, the alleged statement is not against Moonbeam's interest. Third, ICS has presented no evidence that Sabbagh was authorized to make a statement regarding the water loss. Fourth, ICS has not shown the Sabbagh's alleged statement fell within the scope of his employment. See Fed. R. Evid. 801(d)(2).

An admission may be binding on a party if it is a statement offered against the party by an agent or employee concerning a matter within the scope of the agency or employment, made while the relationship existed. Fed. R. Evid. 801(d)(2)(D). ICS, as the proponent of Sabbagh's alleged statement has the burden to demonstrate: (1) an agency relationship existed; (2) the statements were made during the course of the relationship; and (3) the statements relate to matters within the scope of the agency. See *Gomez v. Rivera Rodriguez*, 344 F.3d 103 (1st Cir. 2003). An agency

relationship must be shown to exist by independent evidence before out-of-court statements by the purported agent can be deemed admissions by a party-opponent. Id. The statement must concern a matter within the scope of the agency or employment. *Jacklyn v. Schering-Plough Healthcare Products Sales Corp.*, 176 F.3d 921 (6th Cir. 1999).

ICS cannot even establish that Sabbagh made the statement, let alone that Sabbagh's purported statement was adverse to the interests of the hotel and that the alleged statement was authorized made within the scope of his duties.

/s/ Corinne F. Shoop  
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Dated: January 13, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the Defense counsel Michael F. Schmidt.

/s/ Corinne F. Shoop  
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